

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application No. : 10/763,638
Applicants : Shridhar P. Joshi, *et al.*
Filed : January 23, 2004
Title : Gaming Terminal With Multi-Level Progressive Jackpot
TC/A.U. : 3714
Examiner : Steven J. Hylinski
Docket No. : 247079-000225USP1
Customer No. : 70243

MS Appeals
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.37

Dear Sir:

This Reply Brief is filed in support of the Appellants' appeal to the Board of Patent Appeals and Interferences ("Board") from the final rejection of claims 1-13, 15-25 and 27-37 in the April 21, 2009 Final Office Action. (Exhibit B¹). An Answer Brief ("Answer") in opposition to the appeal was mailed on May 14, 2010. The Answer contained a new ground of appeal. Applicant hereby requests that the appeal is maintained in compliance with 37 C.F.R. 41.37(c) and files this Reply Brief in accordance with that section.

1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the Assignee, WMS Gaming, Inc.

2. RELATED APPEALS AND INTERFERENCES

¹ Applicant will refer to Exhibits previously presented in its initial Appeal Brief.

There are no other appeals or interferences known to Appellant that will have a bearing on the Board's decision in an appeal of this matter.

3. STATUS OF THE CLAIMS

Claims 1-13, 15-25 and 27-37 remain in the application. Claims 14 and 26 were canceled previously.

4. STATUS OF AMENDMENTS

No amendments have been made subsequent to the last amendment filed on January 13, 2009.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Aspects of the present inventive subject matter include, but are not limited to, methods and systems for different game outcomes to achieve identical awards. Claim 1 generally relates to a method for playing a wagering game having a special payout. *See* ¶ 8, Figs. 1, 3, 7a & 7b, U.S. Publication No. 2005/059481 (Exhibit A), Specification, p. 3, ll. 22-23, ¶ 8. A basic game is presented having a plurality of randomly selected outcomes being selected independently of player selection. (Ex. A, ¶¶ 23, 26, Fig. 1, Spec., p. 5, ll. 24-27, p. 6, ll. 11-14, ¶¶ 23, 26). The randomly selected outcomes include a special-payout outcome. (Ex. A, ¶¶ 23, 26, Fig. 1, Spec., p. 5, ll. 24-27, p. 6, ll. 11-17, ¶¶ 23, 26). A basic wager is accepted from a player for the basic game between a minimum and maximum amount. (Ex. A, ¶ 24, Fig. 6, Spec., p. 6, ll. 3-6, ¶ 24). An additional, separate side-wager option 18 is presented for a player to place an additional side-wager distinct from the accepted basic wager. (Ex. A, ¶¶ 25, 44, Fig. 5, Spec., p. 6, ll. 7-10, p. 10, ll. 15-20, ¶¶ 25, 44). The side-wager option requires a side-wager amount in addition to the

accepted basic wager. (Ex. A, ¶¶ 25, 44, Fig. 5, Spec., p. 6, ll. 7-10, p. 10, ll. 15-20, ¶¶ 25, 44). In response to a player not choosing the side-wager option, the player is provided with a first probability greater than zero of achieving the special-payout outcome. (Ex. A, ¶ 44, Fig. 7a, Spec., p. 10, ll. 17-18, ¶ 44). In response to the player choosing the side-wager option, the player is provided with a second probability of achieving the special-payout outcome with the second probability being greater than the first probability. (Ex. A, ¶¶ 10, 44, Fig. 7b, Spec., p. 4, ll. 9-14, p. 10, ll. 17-22, ¶¶ 10, 44). The basic game is conducted with the first probability if the player does not choose the side-wager option, or is conducted with the second probability if the player chooses the side-wager option. (Ex. A, ¶ 44, Figs. 7a-7b, Spec., p. 10, ll. 17-22, ¶ 44). In response to conducting the game, the player is credited the special payout when the special-payout outcome occurs in the basic game. (Ex. A, ¶ 46, Spec., p. 11, ll. 14-15, ¶ 46).

Claim 10 generally relates to a method for playing a wagering game on a gaming terminal 10. (Ex. A, ¶ 22, Figs. 1 and 3, Spec., p. 5, ll. 12-14, ¶ 22). The wagering game has a progressive payout. (Ex. A, ¶ 29, Fig. 1, Spec., p. 7, ll. 4-9, ¶ 29). A basic game is presented having a plurality of randomly selected outcomes being selected independently of player selection. (Ex. A, ¶¶ 23, 26, Fig. 1, Spec., p. 5, ll. 24-27, p. 6, ll. 11-14, ¶¶ 23, 26). The randomly selected outcomes include a progressive-payout outcome. (Ex. A, ¶¶ 28-29, Fig. 1, Spec., p. 6, l. 30 to p. 7, l. 9, ¶¶ 28-29). A basic wager is accepted from a player for the basic game between a minimum and maximum amount. (Ex. A, ¶ 24, Fig. 6, Spec., p. 6, ll. 3-6, ¶ 24). An additional, separate side-wager option 18 is presented for a player to place an additional side wager distinct from the accepted basic wager. (Ex. A, ¶¶ 25, 44, Fig. 5, Spec., p. 6, ll. 7-10, p. 10, ll. 15-20, ¶¶ 25, 44). The side-wager option requires a side-wager amount in addition to the accepted basic wager. (Ex. A, ¶¶ 25, 44, Fig. 5, Spec., p. 6, ll. 7-10, p. 10, ll. 15-20, ¶¶ 25, 44).

A first spinning reel is provided that provides the player with a first probability greater than zero of achieving the progressive-payout outcome. (Ex. A, ¶ 45, Spec., p. 10, ll. 26-29, ¶ 45). A second spinning reel is presented providing the player with a second probability of achieving the progressive-payout outcome, the second probability being greater than the first probability. (Ex. A, ¶ 45, Spec., p. 10, ll. 29-31, ¶ 45). In response to the player selecting the side-wager option, the second spinning reel is substituted for the first spinning reel, increasing the player's probability of winning the progressive payout. (Ex. A, ¶ 45, Fig. 5, Spec., p. 10, l. 31- p. 11, l. 2, ¶ 45).

Claim 12 relates generally to a gaming terminal 10 for playing a wagering game having a special payout with a first payout and a second payout. (Ex. A, ¶ 8, Figs. 1 and 3, Spec., p. 3, ll. 22-23, ¶ 8). The gaming terminal 10 includes a basic game having a randomly selected outcome being selected independently of player selection. (Ex. A, ¶¶ 23, 26, Fig. 1, Spec., p. 5, ll. 24-27, p. 6, ll. 11-14, ¶¶ 23, 26). A basic wager input accepts a basic wager from a player for the basic game on at least one of a plurality of paylines. (Ex. A, ¶ 33, Spec., p. 8, ll. 3-11, ¶ 33). The basic wager is between a minimum and maximum amount. (Ex. A, ¶ 24, Fig. 6, Spec., Spec., p. 6, ll. 3-6, ¶ 24). The gaming terminal 10 has two options for being eligible for the special payout: (i) an additional, separate side-wager input option for placing an additional side-wager distinct from the accepted basic wager, the side-wager option requiring a side-wager amount in addition to the accepted basic wager and (ii) a max-wager option for placing the basic wager at the maximum amount resulting in wagers on each of the plurality of paylines. (Ex. A, ¶¶ 33, 43, Fig. 6, Spec., p. 8, ll. 3-13, p. 10, ll. 6-10, ¶¶ 33, 43). In response to selection of either of the two options, the gaming terminal 10 awards the player the first payout when a first randomly selected outcome is achieved in the basic game. (Ex. A, ¶¶ 35, 43, Spec., p. 8, ll. 19-23, p. 8, ll.

28 – p. 9, l. 5, ¶¶ 35, 43). The gaming terminal 10 awards the player the second payout when a second randomly selected outcome is achieved in the basic game. (Ex. A, 35, 43, Spec., p. 8, ll. 19-23, p. 8, ll. 28 – p. 9, l. 5, ¶¶ 35, 43). If neither of the two options is selected, the gaming terminal 10 does not award the player the first payout when the first randomly selected outcome is achieved in the basic game and does not award the player the second payout when the second selected outcome is achieved in the basic game. (Ex. A, ¶ 35, Fig. 4, step 70, Spec., p. 8, ll. 19-23, ¶ 35).

Claim 25 generally relates to a gaming terminal 10 for playing a wagering game. The gaming terminal 10 includes a basic game having a plurality of symbols that indicate a randomly selected outcome of the basic game. (Ex. A, ¶¶ 23, 26, Fig. 1, Spec., p. 5, ll. 24-27, p. 6, ll. 11-14, ¶¶ 23, 26). The randomly selected outcome is selected independently of player selection. (Ex. A, ¶¶ 23, 26, Fig. 1, Spec., p. 5, ll. 24-27, p. 6, ll. 11-14, ¶¶ 23, 26). The basic game also has a plurality of paylines. (Ex. A, ¶ 24, Fig. 2, Spec., p. 6, ll. 5-6, ¶ 24). A progressive payout has a first payout. (Ex. A, ¶ 29, Figs. 3-6, Spec., p. 7, ll. 3-9, ¶ 29). A basic wager input accepts a basic wager from a player for the basic game between a minimum and maximum amount, the maximum amount resulting in wagers applied to each of the plurality of paylines. (Ex. A, ¶ 24, Fig. 6, Spec., p. 6, ll. 3-6, ¶ 24). A side-wager input device 18 allows a player to place an additional, separate side-wager distinct from the accepted basic wager. (Ex. A, ¶¶ 25, 44, Fig. 5, Spec., p. 6, ll. 7-10, p. 10, ll. 15-20, ¶¶ 25, 44). The side-wager option requires a side-wager amount in addition to the accepted basic wager. (Ex. A, ¶¶ 25, 44, Fig. 5, Spec., p. 6, ll. 7-10, p. 10, ll. 15-20, ¶¶ 25, 44). The gaming terminal 10 presents the player with two independent options to be eligible for the progressive payout: (i) the player placing the side-wager via the side-wager input device and (ii) the player placing the maximum amount of the basic wager.

(Ex. A, ¶¶ 33, 43, Fig. 6, Spec., p. 8, ll. 3-13, p. 10, ll. 6-10, ¶¶ 33, 43). In response to either of the two options being chosen, the gaming terminal 10 awards the player the first payout when a first randomly selected outcome is achieved. (Ex. A, ¶¶ 35, 43, Spec., p. 8, ll. 19-23, p. 8, ll. 28 – p. 9, l. 5, ¶¶ 35, 43). If neither of the two options is chosen, the gaming terminal 10 does not award the player the first payout when the first randomly selected outcome is achieved. (Ex. A, ¶ 35, Fig. 4, step 70, Spec., p. 8, ll. 19-23, ¶ 35).

Claim 28 generally relates to a method for playing a wagering game having a special payout. A basic game having a plurality of randomly selected outcomes selected independently of player selection is conducted. (Ex. A, ¶¶ 23, 26, Fig. 1, Spec., p. 5, ll. 24-27, p. 6, ll. 11-14, ¶¶ 23, 26). A basic wager is accepted from a player for the basic game between a minimum and maximum amount. (Ex. A, ¶ 33, Spec., p. 8, ll. 6-9, ¶ 33). The maximum amount results in a wager on each of a plurality of paylines. (Ex. A, ¶ 33, Spec., p. 8, ll. 6-9, ¶ 33). An additional, separate side-wager option 18 is presented for a player to place a side-wager distinct from the accepted basic wager. (Ex. A, ¶¶ 25, 44, Fig. 5, Spec., p. 6, ll. 7-10, p. 10, ll. 15-20, ¶¶ 25, 44). The side-wager option 18 requires a side-wager amount in addition to the accepted basic wager. (Ex. A, ¶¶ 25, 44, Fig. 5, Spec., p. 6, ll. 7-10, p. 10, ll. 15-20, ¶¶ 25, 44). In response to the player selecting either the side-wager option or the maximum amount of the basic wager, the player is credited with the special payout when a special-payout outcome occurs in the basic game. (Ex. A, ¶¶ 35, 43, Spec., p. 8, ll. 19-23, p. 8, ll. 28 – p. 9, l. 5, ¶¶ 35, 43). If neither the side-wager option nor the maximum amount of the basic wager is selected, the gaming terminal does not credit the player the special payout when the special-payout outcome occurs in the basic game. (Ex. A, ¶ 35, Fig. 4, step 70, Spec., p. 8, ll. 19-23, ¶ 35).

Claim 29 generally relates to a gaming terminal 10 for playing a wagering game having a special payout. The gaming terminal 10 includes a basic game having a plurality of randomly selected outcomes being selected independently of player selection. (Ex. A, ¶¶ 23, 26, Fig. 1, Spec., p. 5, ll. 24-27, p. 6, ll. 11-14, ¶¶ 23, 26). The randomly selected outcomes include a special-payout outcome that awards the special payout. (Ex. A, ¶¶ 23, 26, Fig. 1, Spec., p. 5, ll. 24-27, p. 6, ll. 11-17, ¶¶ 23, 26). A basic wager input accepts a basic wager from a player for the basic game between a minimum and maximum amount. (Ex. A, ¶ 24, Fig. 6, Spec., p. 6, ll. 3-6, ¶ 24). A side-wager input device 18 accepts an additional, separate side-wager distinct from the accepted basic wager. (Ex. A, ¶¶ 25, 44, Fig. 5, Spec., p. 6, ll. 7-10, p. 10, ll. 15-20, ¶¶ 25, 44). The side-wager option requires a side-wager amount in addition to the accepted basic wager. (Ex. A, ¶¶ 25, 44, Fig. 5, Spec., p. 6, ll. 7-10, p. 10, ll. 15-20, ¶¶ 25, 44). In response to a player not making a side-wager distinct from the basic wager, the gaming terminal 10 provides the player with a first probability greater than zero of achieving the special payout. (Ex. A, ¶ 44, Fig. 7a, Spec., p. 10, ll. 17-18, ¶ 44). In response to the player making a side-wager distinct from the basic wager, the gaming terminal 10 provides the player with a second probability of achieving the special-payout outcome with the second probability being higher than the first probability. (Ex. A, ¶¶ 10, 44, Fig. 7b, Spec., p. 4, ll. 9-14, p. 10, ll. 17-22, ¶¶ 10, 44). The gaming terminal 19 credits the player the special payout if the special-payout outcome occurs. (Ex. A, ¶ 46, Spec., p. 11, ll. 14-15, ¶ 46).

6. GROUND S FOR REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1-11 and 28 were improperly rejected under 35 U.S.C. 101 as being directed to non-statutory matter.

Other grounds for rejection to be reviewed on Appeal were addressed in Applicant's initial Brief.

7. ARGUMENT

For the convenience of the Board, claims 1-11 and 29-37 will stand or fall as one group. Claims 12-13, 15-23, 25, and 27-28 will stand or fall as a second group. In its previous Brief, Applicant argued that: a) under either of the different interpretations asserted by the Final Office Action Glavich does not disclose either random selection of an outcome in a basic game or conducting the basic game with different probabilities based on a side wager option; and b) Glavich does not disclose not awarding a first or second payout that would be awarded if a maximum wager or a side wager was made because a payout is always made in Glavich. As will be detailed, the Answer has failed to adequately address these arguments and therefore the claims are allowable over Glavich.

A. Claims 1-11 and 28 Were Improperly Rejected Under 35 U.S.C. 101 As Being Directed To Non-statutory Matter

The new rejection states that independent claims 1, 10 and 28 recite a wagering game in the preamble but do not require the method steps be implemented by any particular machine thereby failing to encompass patentable subject matter under 35 U.S.C. 101. (Answer, pp. 3-4). First, Applicant respectfully submits that sufficient machine elements are recited in these claims and therefore they meet statutory requirements. Claim 10 requires a gaming terminal, and a first and second spinning reel. Claim 11 depends from claim 10 and requires a controller. Claim 28 requires a plurality of paylines and a gaming terminal. These elements constitute machine elements and therefore claims 10-11 and 28 meet statutory requirements under the machine/transformation test.

Second, Applicant respectfully submits that while satisfying the machine/transformation test is one way to meet the requirements of 35 U.S.C. 101 for a method claim, it is not the only way. The Answer cites *In Re Bilski*, 545 F.3d 943, 959-60 (Fed. Cir. 2008) for the proposition that all method claims must pass the machine/transformation test to meet the statutory requirements of 35 U.S.C. 101. (p. 4). However, the Supreme Court has recently found that “the machine-or transformation test is not the sole test for deciding whether an invention is a patent-eligible process.” *Bilski v. Kappos*, 129 S. Ct. 2735 (2010) Applicant respectfully submits that the basis for the rejection cited by the Answer, lack of machine elements or transformation to a particular article, does not place such claims in a non-statutory category and therefore the new grounds of rejection is improper.

B. The Term “Basic Game” Is Defined By The Claim Elements, Specification and Glavich, The Examiner Cannot Properly Take Elements From Glavich’s Bonus Game And Interpret It As A Basic Game Without Failing To Meet Other Elements In The Claims

In its initial Brief, Applicants argued that Glavich does not disclose a “basic game” in claims 1, 10 and 29 (requiring a special payout outcome and different probabilities depending on a side wager) or claims 12, 25 and 28 (requiring a random selection selected independently of player selection). The Answer maintains the erroneous position that the combination of the Glavich main game and bonus feature may be applied against the elements of the pending claims because the term “basic game” is a statement of intended use. (p. 14). The Answer asserts that “any game meeting the limitations of the instant application claims can be interpreted as a basic game.” (p. 14). This argument ignores the basic reading of Glavich noted by the Answer itself, namely that Glavich itself differentiates between a base (main) game and a bonus game. (Ex. D,

Col. 6, ll. 36-42). The Answer offers no rationale why Glavich would disclose or suggest applying features of a defined bonus game in a defined main game.

The Answer also asserts that the term “basic game” does not carry any special meaning the art of electronic casino gaming machines. (p. 14). The Answer proceeds to offer a normal definition of “a first part of a multiple-phase or multi-round casino game.” (p. 14). Applicant asserts that there is indeed a common definition of a basic game offered by the Answer itself and confirmed by Glavich and therefore the application of bonus game features in Glavich are improper to anticipate “basic game” elements as in the claims.

Further, contrary to the assertion of the Answer, a basic game is defined in the specification and therefore provides guidance as to what would suffice as a basic game. The specification defines a bonus game in contrast with the basic game as “the bonus game may comprise any type of game, either similar to or completely different from the basic game, and is entered upon the occurrence of a selected event or outcome of the basic game.” (Ex. A, ¶ 5, Spec., p. 2, ll. 23-26). This definition of basic game is consistent with Glavich which describes a main game having an outcome that triggers the bonus game. Specifically, Glavich explains “the main game 214 is distinguishable from a bonusing feature because there must be at least some amount of play of the main game, before initiating of the bonusing feature, and/or because the main game is the game which is most prominently featured or displayed on the gaming terminal and/or because the main game is the game on which the player wagers.” (Ex. D, Col. 6, ll. 36-42). This is also consistent with the common definition of a basic game asserted by the Answer as the first phase of a multi-phase game. Under the definition of “basic game” whether commonly known or specified by Glavich and/or the specification, the main game (basic game) in Glavich is separate from the bonus game and therefore features of the bonus game in Glavich

(played after the main or basic game) by definition are not part of the basic or main game. It is therefore improper to apply elements disclosed by Glavich in the bonus game to anticipate a basic game, especially when the bonus game in Glavich is triggered by an outcome from the basic or main game itself.

Finally, the Answer ignores the fact that even applying bonus game features from Glavich to the limitations in the claims would still not anticipate all of the elements of the claims. As explained in the initial brief, if the Glavich bonus game is combined with the Glavich basic game to form a “basic game” then the outcomes of the combined “basic game” are not selected independently of player selection as required by claims 12, 25 and 28. The combined Glavich “basic game” also includes outcomes selected by the players and therefore do not meet the requirement that the outcomes are randomly selected as required by claims 1, 10 and 29.

C. Glavich Does Not Teach A Basic Game With A Random Outcome Including A Special-Payout As Required By Claims 1, 10 And 29

Glavich does not disclose a random outcome from the main game including a special payout, as the main game in Glavich only allows the opportunity to play the bonus feature which as pointed out by the initial Brief does not guarantee a payout. The Answer clarifies that picks made in the primary and bonus games in Glavich are the random player-independent selections including a special payout outcome. (p. 15). Applicant does not dispute Glavich discloses random selections such as slot reel symbols for the main slot machine as noted by the Answer. (p. 15). However, the Answer ignores Applicant’s previous argument that these outcomes do not include a special payout outcome as required by claims 1, 10 and 29.

The other random outcome asserted by the Answer in Glavich is the bonus game picks cited in block 236 in Fig. 2. (p. 15). As explained above, Fig. 2 relates to the bonus game which

is triggered from the main or basic game and therefore are outcomes of the special feature game and not the basic game. (Ex. D, Fig. 2, elements 214 and 216). In any case, the outcomes are not randomly selected, as Glavich explains that the actual payout requires that a player selects the outcomes and therefore the payout is not random, it is player selected. (Ex. D, Col. 3, ll. 58-61).

D. Glavich Does Not Disclose Conducting The Basic Game With Different Probabilities Dependent On A Side Wager As Required By Claims 1, 10 And 29

Claims 1, 10 and 29 require conducting the basic game with the first probability if the player does not choose the side-wager option, or the second probability if the player chooses the side-wager option. Glavich does not anticipate these elements because the side wager option only is offered after completion of the main game which is conducted at a fixed probability. (Ex. D, Col. 3, l. 66- Col. 4, l. 2). The Answer repeats the assertion that Glavich may be defined as a “basic” game including base and bonus game components because there is not structure associated with this name. (p. 16). The Answer ignores the fact that the side wager in Glavich only may be applied after the outcomes from the main game are determined and therefore cannot change the probabilities of outcomes regardless of whether other claim features are present.

Even accepting the Answer’s assertion that the bonus game prize in Glavich is a “basic game” special payout, Glavich would not disclose other elements of these claims. Claims 1, 10 and 29 also require that “randomly selected outcomes being selected independently of player selection.” If the bonus game is combined with the basic game then the outcomes are not selected independently of player selection since the player selects the “N player-selectable elements” (Ex. D, Col. 3, ll. 58-60) in Glavich. The Answer again errs by ignoring the actual disclosures in Glavich that preclude various elements of the claims. The combined Glavich “basic game” as construed by the Answer therefore fails to disclose random outcomes being

selected independently of player selection as the bonus feature game in Glavich requires player selection.

E. Claims 12, 25 and 28 Require Not Awarding Payouts When Outcomes Are Obtained; Glavich Always Awards Payouts When Outcomes Are Obtained

Claims 12, 25 and 28 require “if neither of the two options is selected, the gaming terminal does not award the player the first payout when the first randomly selected outcome is achieved in the basic game.” The Answer repeats the Final Office Action’s erroneous analysis that Glavich “lists various alterations that may be made to payouts based on side or max wagers” such as first and second payouts citing Col. 4, l. 44 to Col. 5, l. 16, and ll. 28-38. (p. 18).

Glavich does not teach this element because only the probability of the outcomes are changed in Glavich. Even if the player does not wager the maximum or offer a side-wager, the outcomes of the bonus game may still be achieved by the player in Glavich. (Ex. D, Col. 3, ll. 43-44). At best Glavich discloses changing the number of selections available to a player, N, the associated items for a selection, M, or the number of selections, Z based on a wager. None of the sections cited by the Answer indicate that there is an outcome which award a player a payout when a side wager is made but the same outcome results in no payout when no side wager is made because the number of associated selections M may change, but there is no teaching that the specific associated selection M is assigned a specific selection depending on the existence of a side-wager.

Changing the number, M, of selectable outcomes associated with a favorable result only changes the probability of winning a prize but it does not change the existence of the outcome. (Ex. D, Col. 5, ll. 28-38). The first section cited by the Answer (Col. 4, l. 44 to Col. 5, l. 16) only provides a range of associated outcome types such as multipliers, it does not disclose the

outcomes awarding such types based on the existence of a max bet or a side wager. The other section cited by the Answer (Col. 5, ll. 28-38) only indicates the number of selection outcomes may vary according to the side wager, but it does not indicate there is any outcome that would not potentially award such an outcome type. The wager only affects the probability of such an associated type being awarded. Glavich notes that any “associated item can include various prizes” and therefore there is no range of prizes that is excluded based on a player wager. (Ex, D, Col. 4, ll. 44-53).

8. CLAIMS APPENDIX

A clean copy of the claims 1-13, 15-25 and 27-37 involved in the appeal is included in the Claims Appendix attached to the initial brief.

9. EVIDENCE APPENDIX

A copy of the evidence relied upon by the appellant is included in the Evidence Appendix in the initial Brief and is herein referenced. A list of evidence and where each was entered in the record is included in the Index to the Appendices in the initial Brief.

10. RELATED PROCEEDINGS APPENDIX

As there are no related proceedings, no information is provided in the Related Proceedings Appendix attached to the initial Brief.

11. **CONCLUSION**

For at least the foregoing reasons, the final rejection of appealed claims 1-13, 15-25 and 27-37 set forth in the April 21, 2009 Final Office Action, should be reversed.

Respectfully submitted,

Date: July 14, 2010

/Wayne L. Tang/
Wayne L. Tang
NIXON PEABODY, LLP.
300 S. Riverside Plaza, 16th Floor
Chicago, Illinois 60606
(312) 425-3900
Attorney for Applicants